

REMARKS

Claims 12 through 25, 33 through 37, 43 through 45 remain pending in the present application. No claims have been amended.

Rejection Under 35 U.S.C. §103(a)

The Examiner rejects Claims 12 through 25, 33 through 37, and 43 through 45 under 35 U.S.C. §103(a), alleging them to be unpatentable over Mooty in view of DeLuca et al. The Examiner alleges that this combination would render Applicants' invention obvious to those skilled in the art.

Applicants' invention relates to a vibration dampener for a power tool which is to be held in the hand of a user. The tools include a housing, a motor, a gripping portion and at least one gel containing chamber.

The Examiner alleges that the Mooty reference, in combination with the DeLuca reference, illustrate Applicants' invention. The Mooty reference, relied on by the Examiner, as stated by the Examiner fails to disclose a blister pack, a clamping member, chambers and the cover member. The Examiner relies on DeLuca to provide these features.

DeLuca illustrates a finger-held or finger-manipulated member.

"The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggests a desirability of the modification." In re Fritch 23 U.S.P.Q. 2d 1780 at 1783 (Fed. Cir. 1982).

Here, the Examiner alleges that DeLuca would be combined with Mooty. However, there is no suggestion in either reference of the desirability to combine the two. DeLuca places his device on a pen or pencil. This type of device is not subjected to vibration as in the power tool field. Accordingly, one skilled in the art would not look to this reference to utilize it as a vibration damper.

“The Examiner is relying upon hindsight to arrive at the determination of obviousness. It is impermissible to use the claimed invention as an instruction manual or template to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. In re Fritch, supra, 1784.”

Here, the Examiner has pieced together the two references to allegedly render Applicants’ invention obvious. It is clear that the Examiner cannot use hindsight reconstruction to pick and choose isolated elements in the prior art to deprecate the claimed invention.

In light of the above amendments and remarks, Applicants submit that all pending claims are in condition for allowance. Accordingly, Applicants respectfully request the Examiner to pass the case to issue at his earliest possible convenience. Should the Examiner have any questions regarding the present application, he should not hesitate to contact the undersigned at (248) 641-1600.

Respectfully submitted,

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